

Title

**2006 Final Report
Bureau of Automotive Repair
Enforcement Monitor**

Presented to

**Department of Consumer Affairs and
Joint Committee on Boards, Commissions and
Consumer Protection**

date

December 15, 2006



Management Auditing
Process improvement
Strategic planning
Performance measurement
Financial analysis
Organizational design



STRATEGICA INC.

Contents

PROJECT SUMMARY	1
INTRODUCTION	
Mission of the BAR.....	6
History of the BAR.....	6
Snapshot of the BAR.....	7
Project objectives.....	8
Procedures performed.....	9
FINDINGS AND RECOMMENDATIONS	
Updated Case Audit Statistics.....	10
Status of Prior Recommendations.....	12
APPENDICES	
Appendix 1 – List of acronyms.....	15
Appendix 2 – Text of SB 1542.....	16
Appendix 3 – Year One Report	
Appendix 4 – Year Two Report	

PROJECT SUMMARY

This project is an outgrowth of the 2003 Sunset Review process that focused on the Bureau of Automotive Repair (BAR). After the Sunset Review the California Legislature passed Senate Bill 1542 (Figueroa) (SB 1542) establishing the position of Enforcement Monitor for a two-year period. This project got started in April 2005 and will end in December 2006 with the third and final report. This is the first report.

Our initial investigatory work and discussions with project stakeholders resulted in a line of inquiry focusing on six key questions. These questions incorporated the objectives of SB 1542 as well as stakeholder expectations and are used as an organizing principle for this report. These questions are:

1. Does the BAR disciplinary process provide for due process?
2. Should the Repair Act include a specific definition of fraud?
3. Are regulators enforcing documentation and paperwork standards that don't exist?
4. Is the system of sanctions commensurate with the degree of violation?
5. Should the BAR be in the business of setting and enforcing trade standards?
6. Is the BAR doing enough to prevent violations other than applying sanctions?

Does the BAR disciplinary process provide for due process?

The BAR disciplinary system has come under criticism from industry for being stacked against licensees¹ involved in investigations and disciplinary actions. These criticisms include:

- Proposed decisions, made by Administrative Law Judges (ALJs) after an administrative hearing, can be rejected by the Director of DCA and a new decision can be rendered. Members of industry and the defense bar feel that this provision, called a non-adopt, creates a natural bias against the licensee's case because the mission of DCA is consumer protection. In addition, because the DCA Director is not present at the administrative hearing, a final decision is rendered without the benefit of hearing testimony first-hand or observing witnesses.
- Besides the non-adopt provision, other barriers to seeking a fair hearing include no possibility of recovering the cost of a defense and being required to pay the BAR's investigation costs for the case. Also, the options for discovery available to a licensee

¹ Auto repair dealers are "registrants" and smog check stations and technicians are "licensees." Since many of the findings and recommendations in this report apply to both, for convenience the term "licensee" is used for both types of businesses.

under state law are restricted. Finally, the record inspection provision in the Repair Act is considered to be heavy-handed and a violation of due process.

The issue of what due process is required in regulatory systems such as the BAR has been addressed by various courts including the U.S. Supreme Court. These courts found:

- States can condition the right to enter a profession or trade if there is a compelling public interest. Under this scenario the right becomes more of a privilege and the license is subject to the rules of the regulatory program,
- The federal Constitution does not guarantee full due process in administrative hearings. Only notice and the right to a hearing are guaranteed. However, regulatory schemes and their administration cannot be unreasonable, arbitrary or capricious,
- Case law allows an agency head to adjudicate a case falling within his/her jurisdiction despite the appearance of a conflict of interest. The law assumes that agency adjudicators are impartial in the absence of evidence to the contrary, and
- Warrantless searches, which is what BAR program reps do during record inspections, are legal insofar as the statute authorizing them supports a legitimate regulatory interest of the state and there are sufficient safeguards against the searches getting out of hand.

In our observations and case auditing, we found that the BAR staff conducted the program in a professional but firm manner. Cases were well prepared and field staff conducted themselves appropriately.

The Legislature, DCA and the BAR should work to improve some of the due process safeguards even if the current system passes constitutional muster:

- Exclude the non-adopt option from the BAR's use of the Administrative Procedure Act. Even though the non-adopt option is legal, it helps create a stacked system, is infrequently used, and creates a barrier for licensees seeking a fair hearing on a licensure issue,
- The regulations should allow licensees to recover legal fees if a substantial majority of allegations in an accusation are not proven, and
- The role of the ombudsman should be strengthened so they have more authority and independence in investigatory and discipline matters.

Should the Repair Act include a specific definition of fraud?

The Repair Act includes several acts of conduct that are grounds for sanctioning or revoking a license. Two of these acts delve into the realm of constructive fraud. Constructive fraud is similar to actual fraud except it doesn't require the element of intent to defraud. Constructive fraud usually occurs in a context of a fiduciary or contractual relationship (e.g., an auto repair transaction) where there is a presumed duty to disclose any information that would impact the transaction (e.g., the true condition of the vehicle.) The problem with these provisions is that they can potentially snare one-time mistakes in the same net as more insidious, repeated acts of constructive fraud. Unless the agency can determine whether the "mistakes" are part of a pattern it is difficult to tell the difference.

Because California laws other than the Repair Act apply the concept of constructive fraud on the auto repair industry (i.e., the Civil Code applies the concept to contracts), it is hard to

argue that the concept applies in some situations, such as the validity of a repair contract, but not other situations, such as the licensee's fitness to hold the license.

A bigger issue is the difficulty of understanding the concept of constructive fraud, how the line is crossed between honest mistake and constructive fraud, and how to avoid crossing that line. The BAR should provide more clarity and guidance through a pre-licensing voluntary educational and mandatory testing program for all licensees.

Are regulators enforcing documentation and paperwork standards that don't exist?

This question can also address whether the BAR is enforcing rules that are divorced from the original intent of the Repair Act and the Health and Safety (H&S) Code. These two statutes include many seemingly persnickety rules and regulations covering such things as what information goes into a work estimate, what a smog technician is supposed to do under the hood of a car, etc. There has been criticism that these rules are not only irrelevant but they constitute scope creep from the original intent of the law which was to go after the bad operators and leave the good ones alone.

Besides the fact that these rules have been part of the statutes since day-one it should be acknowledged that the rules do serve a purpose. Documentation standards that require things like the correct address of an ARD on an invoice are intended to improve communication between ARDs and their customers so that the scope of potential problems and disputes is narrowed down to more substantive issues such as workmanship and fraud.

A bigger issue may be that systems used to manage estimates and other documentation frequently lacks functions to fully comply with the law. The Enforcement Monitor noted that these systems are not always programmed or installed correctly causing many inadvertent violations of the Act. Conversely, a well functioning system can not only benefit the consumer by improving the quality of the transaction but can reduce risk for the shop owner.

The BAR does not have a proactive process or program for working with shop management software providers to improve the functionality of their systems. Short of providing any guarantees or warranties, the BAR should implement a program of scheduled or ad-hoc technical conferences for shop management software providers focusing on improving the software and compliance. In addition, the BAR should offer and provide technical reviews of software products on request.

Is the system of sanctions commensurate with the degree of violation?

We conducted an audit of BAR cases to determine:

1. Do non-adopt decisions result in greater sanctions?
2. Do cases get resolved with greater sanctions than the guidelines allow?
3. Do cases get resolved with greater sanctions than the facts would warrant?

We found:

- Non-adopt decisions frequently result in greater sanctions (17 out of 26 non-adopt cases over the last three years.) This lends credence to industry concerns that a hearing is risky and will not be fairly adjudicated.
- All cases are resolved within guidelines and are even frequently sanctioned less than the guidelines. In fact, two of the non-adopt cases in the sample were ultimately decided at less than what the guidelines call for.
- In nearly all the cases, the sanctions applied appeared to match the severity of the proven allegations and were consistent with other cases with similar facts and circumstances.

Should the BAR be in the business of setting and enforcing trade standards?

The Repair Act and the H&S Code are mostly silent on what constitutes trade standards even though the BAR files disciplinary actions citing trade standard violations. Defining trade standards would eliminate discretion for repair technicians and vastly expand the scope of BAR's regulatory activities and is not in the best interests of the State. One exception to this involves brake diagnosis. Interview feedback suggests that standards for diagnosing brake problems and communicating these problems to consumers would be helpful by instilling a higher level of objectivity and specificity in brake problem diagnoses and giving consumers a more informed basis for making repair decisions. The BAR should convene a committee of regulators, consumer advocates and industry representatives to explore the feasibility of brake diagnosis standards. A model for this regulation is found in the Findings and Recommendations section of this report.

Is the BAR doing enough to prevent violations other than applying sanctions?

One area where the Repair Act is lacking enforcement capability is in licensing service writers, managing employees, and beneficial owners of ARDs. The current system of registering business entities is sometimes unable to prevent violators from re-entering the industry under another guise. The ARD license should be structured more in line with how smog check licenses are issued where actual operators are licensed in addition to the business. Key individuals should be required to pass an exam on BAR standards and regulations, be issued a license and be subject to discipline in the event of violations. BAR or a contractor could provide voluntary seminars prior to taking the exam. Existing licensees should be required to take the course and pass a test as a condition for continued licensure. This system would:

- Help ensure a minimal level of proficiency without costing industry much down time,
- Build licensee's awareness of what the standards are, how they can be complied with, the business benefits of compliance, and how the BAR operates,
- Provide a greater incentive to adhere to the Auto Repair Act and the H&S Code because individuals will be personally accountable for their actions in addition to the business entity,
- Allow more accurate targeting of sanctions to the responsible parties. This can be a real advantage when addressing a large ARD like a dealership, and
- Provide that those who financially benefit from violations can be disciplined with more consistency than is currently the case.

Additional Areas of Investigation

Limitations – State law contains statutes (B&P 9889.8 and H&S 44072.7) setting time limits for filing accusations against brake and lamp stations and smog check stations. Except for cases of fraud, these statutes set a limit of three years between the date of a violation and the date an accusation is filed.² There has been a general presumption that B&P 9889.8 applied to all ARD disciplinary cases. However, a careful reading of the statute will reveal that the statute only applies to brake and lamp stations. The result is that, in fact, there is no limitation that applies to other ARDs. The Legislature should amend the B&P Code to include limitations for consumer protection cases filed under B&P Section 9884 modeled after the existing limitation statutes.

Minimal Penalty Guidelines – Title 16 of the CCR contains penalty guidelines for violations of key provisions in the B&P and H&S Codes. In some cases there is a wide disparity in these guidelines between provisions addressing smog check violations and auto repair violations. These encompass violations addressing preparation of estimates and invoices. Fortunately, the BAR has prepared and submitted a Regulation Change Proposal dated 12/28/05 that clears up these disparities along with some additional clarifications in the guidelines. We recommend the State adopt this Regulation Change Proposal.

Arbitration – Binding arbitration (mandatory and/or voluntary) was investigated for its potential in resolving some portion of the consumer complaint workload. Unfortunately, the potential cost of arbitration and the BAR's prior experience with the technique do not favor its successful implementation and we are not recommending its adoption.

Program Rep Training – The Enforcement Monitor reviewed the scope of program representative training programs and attendance data. The programs were found to be broad in scope covering a range of technical and policy subjects and were well attended.

Charging Timelines – An analysis of actual timeliness data for investigating and charging BAR disciplinary cases show that, on average, cases are charged within statutory deadlines. The average case is filed within 348 days³ and decisions are reached within 797 days.⁴ In addition to charging disciplinary cases, the BAR mediates complaints in 35 days on average.

Unlicensed Activity – The BAR dedicates 12 staffpersons to the problem of unlicensed auto repair businesses (most "unlicensed" businesses are just delinquent in renewing). These staffpersons utilize a combination of in-house search techniques and field inspections to identify and enforce against unlicensed businesses. The unit demonstrates a high rate of success in achieving compliance.

² There is no clear legal definition of what it means to file an accusation but it is generally understood to mean the date that an accusation is signed by the BAR Chief. The law could probably benefit from additional clarity in this area as well.

³ As mentioned earlier, the standard is three years except for cases of fraud.

⁴ Once a case is filed, the timeline is controlled by the Attorney General and the Office of Administrative Hearings.

INTRODUCTION

Mission of the BAR

The mission of the BAR is to protect and serve California consumers by ensuring a fair and competitive automotive repair marketplace and implementing a model motor vehicle air quality improvement program.

The mission of the Department of Consumer Affairs (DCA), of which the BAR is a unit, is to protect and serve consumers while ensuring a competent and fair marketplace.

A significant distinction between the two missions is the BAR's incorporation of an environmental protection goal (i.e., promoting air quality) in its mission where the DCA mission focuses solely on consumer protection. The BAR air quality enhancement goal is implemented through the Bureau's enforcement of smog check station rules and procedures.

History of the BAR

The Automotive Repair Act was passed 1971 through Senate Bill 51 (SB51) (Beilenson). The act mandated a statewide consumer protection program for the auto repair industry and a system of registering auto repair dealers (ARDs). In 1972 the BAR was established within the Department of Consumer Affairs (DCA). The Automotive Repair Act was codified in Business & Professions Code (B&P Code), Chapter 20, sections 9880 et seq.

In 1977, amendments to the Federal Clean Air Act required those states not meeting air quality standards to implement Inspection and Maintenance (I/M) programs whereby vehicles would be tested for compliance with emission standards at smog check facilities. In 1982 the BAR was given responsibility for enforcing smog check station rules and standards.

In 2003, a Sunset Review⁵ was conducted that attracted significant interest from the auto repair and smog check industry. Extensive criticism was directed at agency management for what was perceived to be heavy-handed enforcement tactics, constricted due process rights and insensitivity towards the concerns of the industry. In response the state legislature sponsored Senate Bill 1542 (SB 1542) (Figueroa) to establish the position of Enforcement Monitor to investigate the claims put forth by industry and evaluate the fairness of the

⁵ Sunset reviews are conducted periodically by state government to determine if a program is meeting the objectives of the enabling legislation, operating efficiently or accomplishing its mission. Usually a sunset review coincides with a pre-programmed opportunity to either reauthorize the existence of the program, change it or shut it down.

agency's practices. Enforcement monitors have been appointed for other state consumer protection boards and bureaus in the past so the appointment of a monitor for the BAR was not unprecedented for state government.

Snapshot of the BAR

The BAR employs 551 staff in 12 field offices around the state in addition to the Sacramento headquarters. These field offices allow BAR staff to be close to licensees⁶ and consumers. The BAR also has seven documentation labs where state-owned vehicles are prepared for conducting undercover operations.

About half of the staff are employed as Program Representatives, a title denoting an investigator that responds to, and investigates complaints, conducts formal investigations, pursues disciplinary actions. Program reps also provide formal and informal coaching and education for members of industry on ways to comply with auto repair and smog check regulations.

The agency is organized functionally with three major divisions:

- Smog Check Engineering and Operations,
- Consumer Assistance and Administration, and
- Field Operations and Enforcement.

Most of the activity addressed by the Enforcement Monitor project occurs in the Field Operations and Enforcement Division.

Legal authority for BAR operations is found in three main sources:

- B&P Code 9880 et seq. – commonly called the Auto Repair Act. This series of statutes covers the consumer protection part of the BAR. This statute was originally passed in 1971.
- Health & Safety (H&S) Code Sections 44000 et seq. – This series of statutes covers the oversight of smog check stations. The portion most relevant to the BAR and this project is Section 44014 et seq.
- These statutes are backed up by regulations found in Chapter 1, Division 33 of Title 16 of the California Code of Regulations (CCR).

The BAR is a self-supporting agency and does not rely on state general fund support. In FY 2003-04 the BAR had a budget of \$108 million. Key revenue sources include smog check fees paid by consumers and licensing fees paid by ARDs and smog, lamp and brake stations and technicians.

⁶ Auto repair dealers are "registrants" and smog check stations and technicians are "licensees." Since many of the findings and recommendations in this report apply to both, for convenience the term "licensee" is used for both types of businesses.

Key workload statistics include (all figures are for FY 2005-06 unless otherwise noted):⁷

- 42,500 registered ARDs (these include smog check stations which are required to have an ARD registration as well as a smog check facility license)
- 800 educational presentations held
- 17,000 complaints received
- 16,800 complaints closed
- 6,700 complaints referred to BAR field offices for investigation
- Top 3 complaint categories:
 1. Auto body/auto glass repair
 2. Steering/brake repair
 3. Transmission repair
- 28,400 inspections of smog check facilities⁸
- 1,300 investigations of auto repair and smog check locations⁹
- 770 office/citation conferences held for ARDs
- 800 citations issued to smog check licensees with total amount fined of \$275,000
- 104 cases referred to the Attorney General for disciplinary action
- 69 cases referred to local prosecutors for criminal prosecution
- 177 stipulated settlements
- 199 licenses revoked

Project objectives

Objectives for the Enforcement Monitor program were covered in SB 1542, the bill authorizing the Enforcement Monitor. The specific language of the bill is shown in Appendix 2 but is summarized below:

- Examine the accuracy and consistency in the application of sanctions or discipline,
- Evaluate the viability and fairness of procedures available to licensees and registrants to respond to allegations of violations,
- Evaluate the accessibility, fairness and independence of the appeals process,
- Evaluate the prioritization of investigatory and prosecutory resources,
- Evaluate the expertise of bureau staff in accepted industry standards,
- Evaluate the effectiveness of DCA's ombudsman and advisory committee,

⁷ Most numbers are approximations.

⁸ Smog check stations are inspected twice a year.

⁹ The majority of investigations are triggered by complaints (in the case of auto repair establishments) or evidence of compliance issues (in the case of smog check stations).

- Analyze and consider a statutory definition of the term “fraud” and how it applies to licensees and registrants,
- Analyze and consider the establishment of formal diagnostic and repair standards,
- Analyze and consider the licensing or registration of technicians,
- Consider the establishment of a formal code of conduct, and
- Evaluate the processing of complaints and investigations.

Procedures performed

Strategica, Inc. performed the following procedures during the Enforcement Monitor project to date:

- Conducted an entrance conference,
- Met industry stakeholders at a series of forums held throughout the state,
- Interviewed 45 BAR employees, legislative staffers, prosecutors, industry representatives, defense attorneys, consumer advocates,
- Read 34 reports and other documents (e.g., BAR plans, reports and letters from industry reps, educational materials, statutes & regulations),
- Developed an essential elements of due process list and compared it to the Administrative Procedure Act (APA),
- Conducted 12 ridealongs with BAR program reps and observations of office conferences and administrative hearings,
- Observed DCA staff at 2 mediation centers,
- Mapped processes for investigating complaints and handling disciplinary matters,
- Audited 30 cases for due process, consistency in sanctions,
- Examined the legal basis for various elements of the Auto Repair Act and the APA,
- Examined features of other regulatory practices at peer agencies such as the Alcoholic Beverage Commission, the Medical Quality Board and the Contractors State License Board,
- Researched shop management software systems and contacted software publishers,
- Researched arbitration systems in California and Washington,
- Researched and drafted brake system trade standards, and
- Researched data on program representative training, unlicensed activity enforcement, charging timelines and case prioritization, and minimum penalty guidelines.

FINDINGS

The following few pages describe our updated findings on the case audit and the status of prior recommendations. There was no additional research performed since the Year Two Report was issued in June 2006. Please review this report and the December 2005 Initial Report in Appendices 3 and 4 for additional project findings.

Updated Case Audit Statistics

An extensive audit of closed disciplinary case files was conducted for the Year One report. For this final report we added six additional cases bring the total audited to 30. The following text describes updated findings for the entire sample.

The case audit sample (for all cases) had the following characteristics:

- 30 total cases
- 6 cases were resolved through stipulated settlements
- 22 cases were resolved after an administrative hearing
- 1 case was resolved ministerially by BAR
- 1 case was dismissed by the ALJ because it exceeded the limitation statute
- 7 cases were selected by the BAR¹⁰
- 17 cases were selected at random by the Enforcement Monitor
- 6 cases were referred by industry
- 21 cases were for auto repair dealers
- 9 cases were for smog check stations
- 7 cases were non-adopt decisions

The BAR has prepared Standard Terms and Conditions of Probation¹¹ that establishes a range of sanctions for common violations of the Repair Act and the Health & Safety Code. For example, the range of sanctions for violating B&P Code 9884.7(a)(1), making false and misleading statements, would be revocation on the high end and a 10-day suspension¹² plus 2 years of probation on the low end. Like most sentencing guidelines used in judicial environments, the disciplinary guidelines are intended to instill consistency in how sanctions are applied so that there is a greater nexus between violations and penalties.

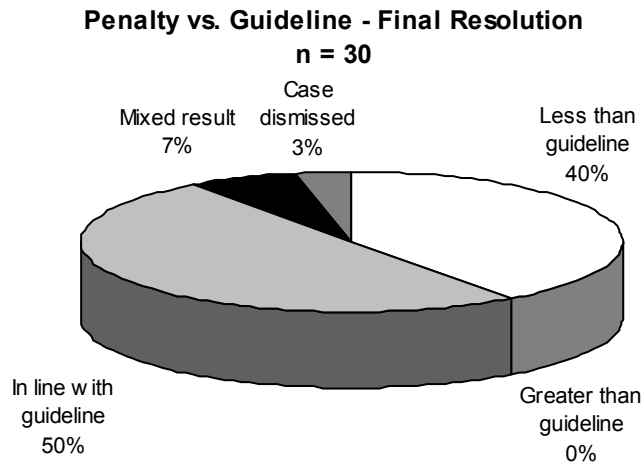
¹⁰ BAR was asked to select some cases for the sample because we wanted to review recent non-adopt cases. BAR staff were in a position to identify these cases.

¹¹ Published January 2005.

¹² The guidelines actually call for a 90-day suspension with 80 days stayed or reduced.

To ensure that cases are not being resolved with greater or lesser sanctions than called for in the guidelines we compared final decisions with the published guidelines in our audit.¹³ The following chart shows our results:

Figure 1 – Penalty vs. guidelines – final resolution



Source: BAR case files

As seen in the chart, 50% of cases in our sample were decided within the guidelines. The chart also shows that cases are frequently decided with a sanction that is less than the guidelines. In fact, of the seven non-adopt decisions in our sample, three were ultimately decided with sanctions less than the guidelines which shows that under-sanctioning is not just within the realm of ALJs. The audit also showed that no cases were decided at a sanction that was more than the guidelines although the highest sanction for most violations is revocation so it would be hard to exceed this sanction.

One concern raised was the alleged lack of a connection between the nature of a complaint and how cars are prepared for undercover runs sent to the business that was the subject of the complaint. The perception is that the inducements prepared on undercover vehicles are dissimilar to the nature of complaints. In our audit, five cases had both a complaint and at least one undercover run. In four of the five cases the nature of the inducement was, in fact, similar to the complaint.

¹³ Final decisions incorporate those decisions made after a non-adopt.

Status of Prior Recommendations

The following pages list the recommendations from the Initial Report and the Year Two report and the status of implementation. Note that Recommendation 8 has been changed from the Initial Report. Recommendations 5 and 6 were dropped.

Recommendation 1 – The Legislature should exclude the non-adopt provision from the Auto Repair Act. Status: No progress. Note this recommendation requires legislation.

Recommendation 2 – The BAR should amend office conference reports to include an acknowledgement at the end of the report regarding the attendee’s understanding of what was discussed and the purposes of the conference. Status: Complete.

Recommendation 3 – The Legislature should amend B&P Code 125.3 directing DCA to pay all actual legal fees incurred by licensees where the BAR was not able to prove a substantial number of the allegations in an administrative hearing. Status: No progress. Note this recommendation requires legislation.

Recommendation 4 – DCA should enhance the guidelines and authority of the ombudsman. Status: The specific responsibilities of the ombudsman are still being evaluated. Input is being sought from industry representatives.

Recommendation 7 – The BAR should implement recommendations from the Auto Body Repair Inspection Pilot Program Report to the Legislature. Status: The Auto Body Inspection Program was reinstated in November 2006. This included establishing a 1-800 phone number for consumers to request inspections of collision repairs by BAR representatives.

Recommendation 8 – The BAR and the Legislature should establish a system of required testing and licensing for service writers covering basic knowledge and application of the Auto Repair Act and sound business practices. Provide training on tested material on a voluntary basis through classroom, on-site or self-directed methods. In addition, at least one beneficial owner of an ARD should be licensed. Status: No progress.

Recommendation 9 – The BAR should implement annual or semi-annual technical conferences for shop management software providers. Offer technical reviews of software products on request. Status: No progress.

Recommendation 10 – The BAR should convene a committee of regulators, consumer advocates and industry to explore the feasibility of regulations on brake standards. Status: No progress.

Recommendation 11 – The Legislature should amend the Auto Repair Act to include limitations for CPO filings in Section 9884 of the B&P Code. Status: No progress. Note this recommendation requires legislation.

Recommendation 12 – The BAR should continue pursuing adoption of the Regulation Change Proposal to improve and clarify the disciplinary guidelines. Status: The Proposal is currently in the review and comment stage. Implementation should occur in 2007.

IV. APPENDICES

1. List of acronyms
2. Text of SB 1542 (Figueroa)
3. Initial Report (12/20/05)
4. Year Two Report (6/9/06)

Appendix 1
List of Acronyms

ALJ	Administrative Law Judge
APA	Administrative Procedure Act
ARD	Automotive Repair Dealer
BAR	Bureau of Automotive Repair
B&P Code	Business and Professions Code
CCR	California Code of Regulations
DCA	California Department of Consumer Affairs
GC	Government Code
H&S Code	Health and Safety Code

Appendix 2 Text of SB 1542 (Figueroa)

BILL NUMBER: SB 1542 CHAPTERED
BILL TEXT

CHAPTER 572
FILED WITH SECRETARY OF STATE SEPTEMBER 17, 2004
APPROVED BY GOVERNOR SEPTEMBER 17, 2004
PASSED THE SENATE AUGUST 25, 2004
PASSED THE ASSEMBLY AUGUST 23, 2004
AMENDED IN ASSEMBLY JULY 23, 2004
AMENDED IN ASSEMBLY JUNE 21, 2004
AMENDED IN ASSEMBLY JUNE 14, 2004
AMENDED IN SENATE MARCH 22, 2004

INTRODUCED BY Senator Figueroa
 (Coauthors: Senators Aanestad and Vincent)
 (Coauthors: Assembly Members Correa, Nation, and Runner)

FEBRUARY 19, 2004

An act to amend Sections 9882 and 9884.17 of, and to add and repeal Section 9882.6 of, the Business and Professions Code, relating to automotive repair, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1542, Figueroa. Bureau of Automotive Repair.

The Automotive Repair Act creates the Bureau of Automotive Repair in the Department of Consumer Affairs, with certain powers and duties relative to the licensing and regulation of automotive repair dealers and various other licensees. The act creates the Vehicle and Inspection Repair Fund and directs that all fees and revenues collected pursuant to the act and pursuant to the motor vehicle inspection program be deposited into the fund. Existing law requires the Joint Committee on Boards, Commissions, and Consumer Protection to hold a public hearing every 4 years to receive testimony from the Director of Consumer Affairs and the bureau, and to evaluate the bureau's effectiveness and efficiency. Existing law requires the bureau to design and approve a required sign at all automotive repair dealer locations advising the public of the bureau's telephone number and other related matters. A violation of the Automotive Repair Act is a crime.

This bill would require the sign to include the bureau's Internet address. By changing the definition of a crime, the bill would impose a state-mandated local program. The bill would make nonsubstantive changes to the provisions governing the committee's review of the bureau.

This bill would require the Director of Consumer Affairs to appoint a Bureau of Automotive Repair Administration and Enforcement Monitor by January 3, 2005, and would appropriate \$184,000 from the Vehicle and Inspection Repair Fund for the 2004-05, 2005-06, and 2006-07 fiscal years to the department to contract for this position.

The bill would require the monitor to evaluate the bureau and research and analyze specified issues. The bill would require the monitor to submit a report to the director, the Secretary of State and Consumer Services Agency, the bureau, and the Legislature by June

1, 2005, and every 6 months thereafter, and to issue a final report by December 31, 2006.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 9882 of the Business and Professions Code is amended to read:

9882. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In 2003 and every four years thereafter, the Joint Legislative Sunset Review Committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the bureau. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare. The committee shall evaluate and review the effectiveness and efficiency of the bureau based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

SEC. 2. Section 9882.6 is added to the Business and Professions Code, to read:

9882.6. (a) (1) The Director of Consumer Affairs shall appoint a Bureau of Automotive Repair Administration and Enforcement Monitor no later than January 3, 2005. The director may retain a person for this position by a personal services contract. The Legislature hereby finds, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the administration and enforcement monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position shall include experience in the performing of audits of or operating state administrative regulatory agencies, familiarity with state laws, rules, and procedures pertaining to the bureau, and familiarity with the relevant administrative procedures.

(c) (1) The administration and enforcement monitor shall evaluate the bureau's disciplinary system and procedures, with specific concentration on improving the overall efficiency and assuring the

fairness of the enforcement program, and the need for administrative structural changes. The director shall specify further duties of the monitor.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the administration and enforcement monitor's appointment and shall include, but not be limited to, researching and analyzing the following:

(A) The appropriate authorization for, accuracy of, and consistency in, the application of sanctions or discipline imposed on licensees or registrants.

(B) The viability and fairness of procedures available to licensees and registrants to respond to allegations of violations prior and subsequent to formal and/or other disciplinary actions being taken.

(C) The accessibility, fairness, and independence of the appeals process for licensees and registrants at all levels of the disciplinary process, including procedures to respond to allegations before and after formal and/or other disciplinary actions are taken.

(D) The prioritization of investigatory and prosecutory resources, particularly with respect to cases involving significant consumer harm.

(E) The adequacy of expertise of bureau staff in accepted industry standards, practices, and the applicable state and federal laws.

(F) The effectiveness of the Bureau's Industry Ombudsman and Advisory Committee, particularly in relation to their communication with licensees, registrants, and the public.

(G) The effectiveness of the bureau's cooperation with other governmental entities charged with enforcing related laws and regulations regarding automotive repair dealers and smog check stations and technicians.

(H) The creation of a statutory definition of the term "fraud."

(I) The establishment of formal diagnostic and repair standards.

(J) The licensing or registration of technicians working within the various fields of automotive repair.

(K) The establishment in regulation of a formal code of conduct for automotive repair dealers and technicians.

(L) The quality, consistency, and speed of complaint processing and investigation, and recommendations for improvement.

In performing his or her monitoring duties, the administration and enforcement monitor shall confer with, and seek input from, bureau staff, registered or licensed professionals, the Office of the Attorney General, members of the public, and other interested or relevant parties regarding their concerns and views on the bureau and its operations.

(3) The administration and enforcement monitor shall exercise no authority over the bureau's discipline operations or staff. However, the bureau and its staff shall cooperate with him or her, and the bureau shall provide data, information, and case files as requested by the administration and enforcement monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The administration and enforcement monitor shall submit an initial written report of his or her findings and conclusions to the bureau, the director, the Secretary of State and Consumer Services Agency, and the Legislature no later than July 1, 2005, and every six months thereafter, and be available to make oral reports if

requested to do so. The administration and enforcement monitor may also provide additional information to either the director or the Legislature at his or her discretion or at the request of either the director or the Legislature. The administration and enforcement monitor shall make his or her reports available to the public or the media. The administration and enforcement monitor shall make every effort to provide the bureau with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the bureau may disagree.

(e) The administration and enforcement monitor shall issue a final report prior to December 31, 2006. The final report shall include final findings and conclusions on the topics addressed in the initial report submitted by the monitor pursuant to subdivision (d).

(f) This section shall become inoperative on April 1, 2007, and as of April 1, 2007, shall be repealed, unless a later enacted statute, which is enacted before April 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 9884.17 of the Business and Professions Code is amended to read:

9884.17. The bureau shall design and approve of a sign which shall be placed in all automotive repair dealer locations in a place and manner conspicuous to the public. That sign shall give notice that inquiries concerning service may be made to the bureau and shall contain the telephone number and Internet Web site address of the bureau. The sign shall also give notice that the customer is entitled to a return of replaced parts upon his or her request therefor at the time the work order is taken.

SEC. 4. The sum of one hundred eighty-four thousand dollars (\$184,000) is hereby appropriated from the Vehicle Inspection and Repair Fund to the Department of Consumer Affairs for the 2004-05, 2005-06, and 2006-07 fiscal years for the purpose of contracting for the employment of a Bureau of Automotive Repair Administration and Enforcement Monitor pursuant to Section 9882.6 of the Business and Professions Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.